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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 196.

WILLIAM L. LEDBETTER, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF IOWA.

FILED JULY 13, 1896.

(16,334.)

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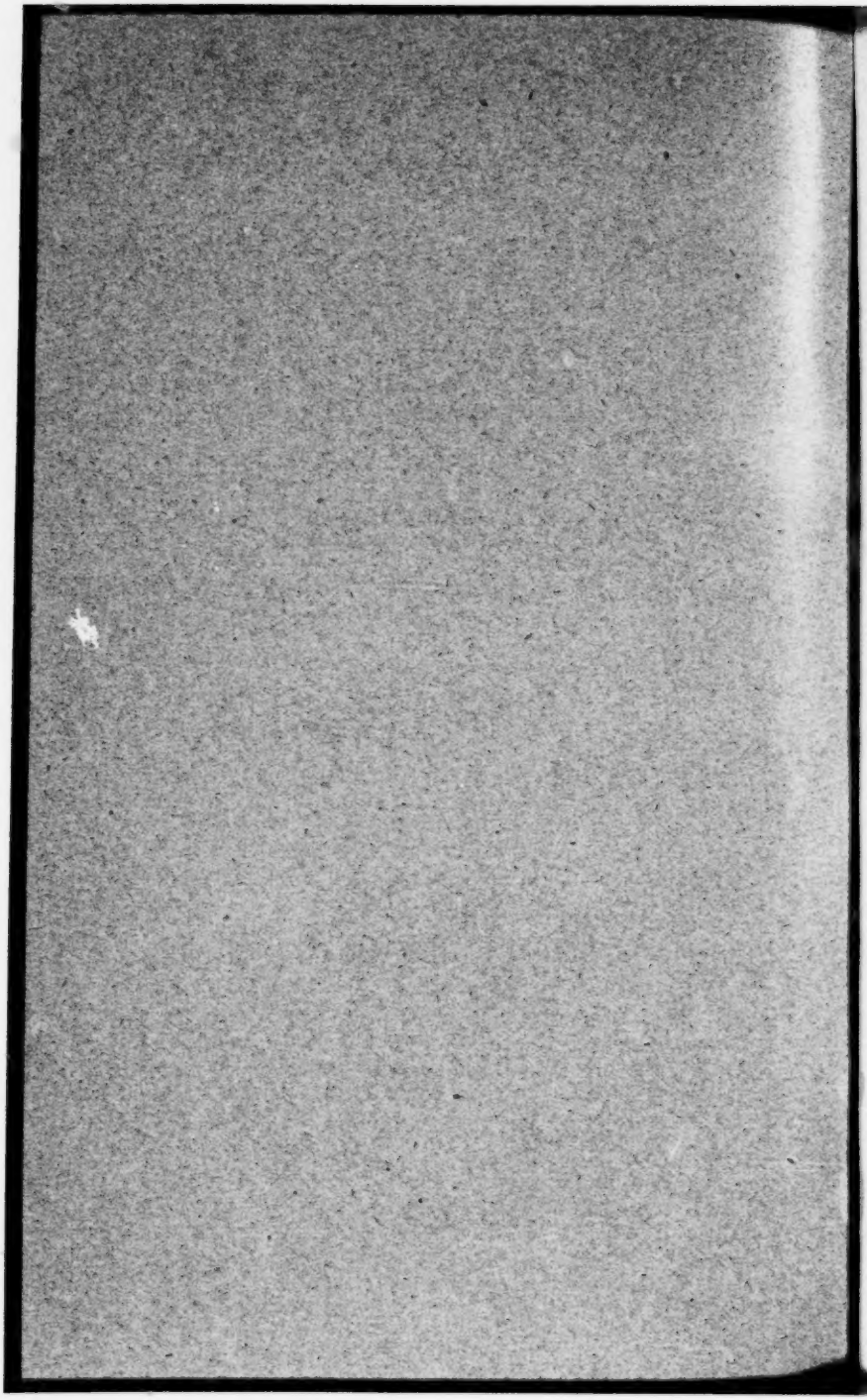

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., AUGUST 28, 1897.

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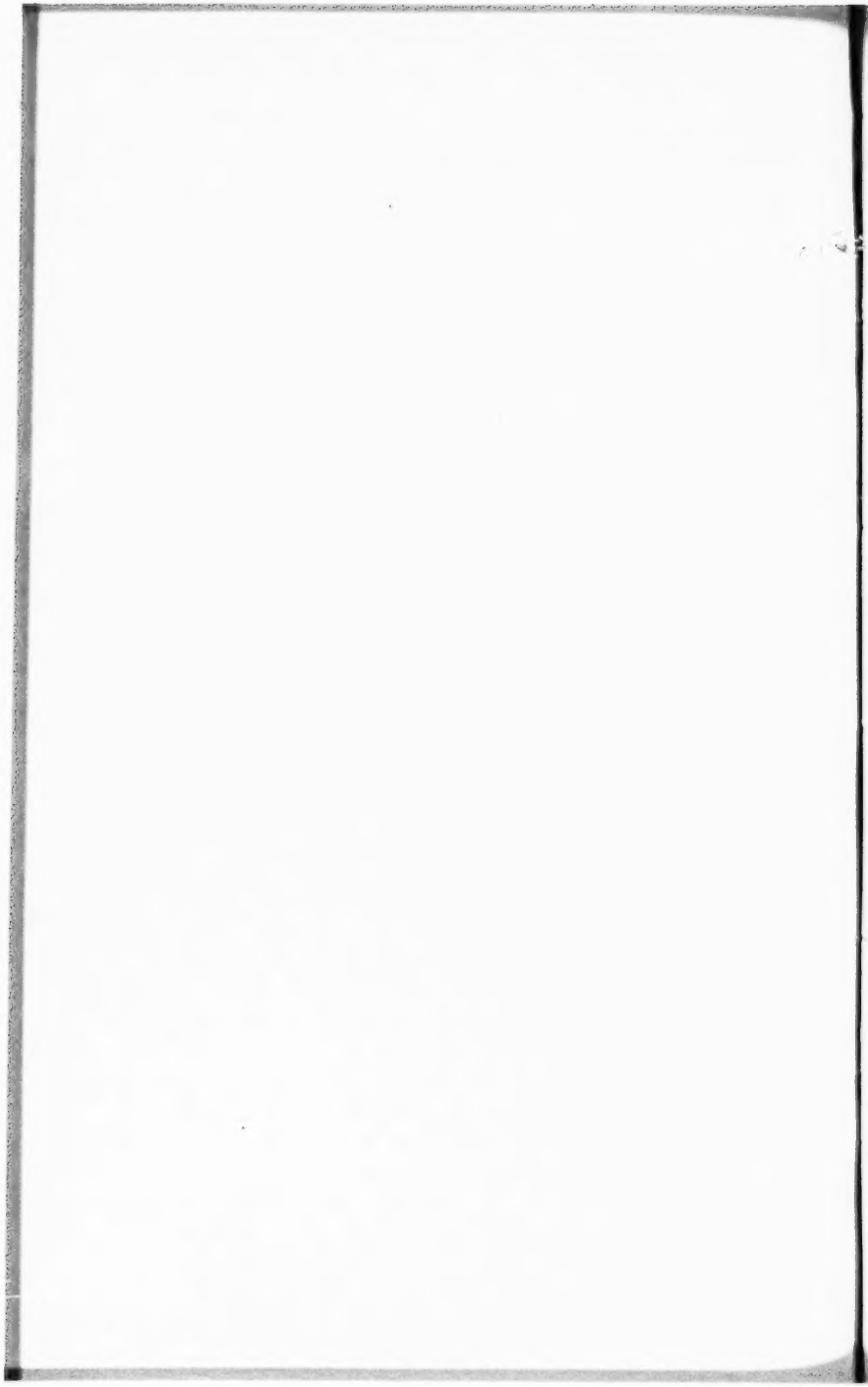

BLEED. T

1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judge of the district court of the United States for the southern district of Iowa, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said district court, before you, in a cause entitled United States, by indictment, against William L. Ledbetter, defendant, No. 4134, a manifest error is alleged to have happened, to the great damage of the said defendant, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, D. C., on the 15th day of July, 1896, in said Supreme Court, that, the records and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done herein to correct that error what of right and according to the laws and custom of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 20th June, in the year of our Lord one thousand eight hundred and ninety-six.

(Signed) J. J. STEADMAN,
Clerk of the District Court of the United States for the Southern District of Iowa,
[SEAL OF D. C.] By CHAS. J. SMITH, *Deputy.*

Allowed by—

JNO. S. WOOLSON,
U. S. District Judge.

Endorsed: Filed Jul- 6, 1896. J. J. Steadman, clerk, by Chas. J. Smith, deputy.

2 In the District Court of the United States in and for the Southern District of Iowa, *ss:*

And now here the judge of the district court of the United States in and for the southern district of Iowa makes return of this writ by annexing hereto and sending herewith under the seal of the said district court a true and attested copy of the record and proceedings in the suit within mentioned, with all things concerning the same, to the Supreme Court of the United States, as therein commanded.

In testimony whereof I, J. J. Steadman, clerk of the district court of the United States in and for the southern district of Iowa,

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have hereunto set my hand and seal of said court this 6th day of July, 1896.

[Seal of District Court of the U. S., Southern District of Iowa, Keokuk.]

J. J. STEADMAN, *Clerk*,
By CHAS. J. SMITH, *Deputy*.

3 District Court of the United States in and for the Southern District of Iowa.

UNITED STATES, by Indictment,
vs.
WILLIAM L. LEDBETTER.

Transcript of Record.

UNITED STATES OF AMERICA,
Southern District of Iowa, } *ss:*

At a district court of the United States begun and holden at Keokuk, within and for the southern district of Iowa, on the second Tuesday of April (being the 14th day of said month), in the year of our Lord one thousand eight hundred and ninety-six, before the Honorable Jno. S. Woolson, judge, the following, among other, proceedings were had, to wit:

TUESDAY MORNING, *April 28th*—9 o'clock a. m.

Court met pursuant to adjournment.

UNITED STATES
vs.
WILLIAM L. LEDBETTER. } 4134.

Indictment for carrying on the business of a retail liquor dealer without hav- paid the special tax therefor, as required by law.

This day came the grand jury for the term, heretofore duly empaneled and sworn, to wit, Ed. Campbell, foreman; S. S. Fowler, Cortez Maxwell, J. E. Jennings, Frank Le Bron, William
4 Stihr, Sam. C. Wescott, H. M. Johnson, David A. Burrows, William Chidester, R. M. Hicks, John Fullen, John Putker, George Van Beek, Joseph Workman, A. N. Alberson, Jno. C. Bowman, William Bray, J. W. Jacobs, R. M. Hamilton, and by their foreman, in open court, returned an indictment against William L. Ledbetter for carrying on the business of a retail liquor dealer without having paid the special tax therefor, as required by law; which said indictment was duly filed by the clerk and placed among the other papers in the case.

In the District Court of the United States in and for the Southern District of Iowa, April Term, A. D. 1896.

The grand jurors of the United States of America duly empaneled, sworn, and charged to inquire in and for the body of said southern

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district of Iowa, at a term of the United States district court begun and held at Keokuk, in said district, on the 14th day of April, A. D. 1896, in the name and by the authority of the United States of America, upon their oaths do find and present that Lewis Ledbetter, late of said district, heretofore, to wit, on the — day of April, A. D. 1896, in the county of Appanoose, in the southern district of Iowa, and within the jurisdiction of this court, did then and there wilfully, unlawfully, and feloniously carry on the business of a retail liquor dealer without having paid the special tax therefor, as required by law, contrary to the statute in such case made and provided and against the peace and dignity of the United States of America.

5 Second count. And the grand jurors aforesaid upon their oaths aforesaid do further find and present that the said Lewis Ledbetter, late of said district, heretofore, to wit, on the — day of April, A. D. 1896, in the county of Appanoose, in the southern district of Iowa, and within the jurisdiction of this court, did then and there wilfully, unlawfully, and feloniously carry on the business of a retail dealer in malt liquors without having paid the special tax therefor, as required by law, contrary to the statute in such case made and provided and against the peace and dignity of the United States of America.

(Signed) CHAS. D. FULLEN,
United States Attorney.
H. M. EICHER,
Assistant U. S. Attorney.

No. 4134.
A true bill.
(Signed) EDW. CAMPBELL, JR., *Foreman.*

Presented in open court by the foreman of the grand jury, in the presence of said grand jury, and filed by me in their presence this 28th day of April, A. D. 1896.
(Signed) J. J. STEADMAN,
U. S. Clerk.

6 This indictment was found at the present term of court and was returned by the grand jury and filed in court on the 28th day of April, 1896. Thereafter, on the 30th day of April, 1896, the said defendant was called to the bar and the following proceedings were had, to wit:

THURSDAY MORNING, *April* 30—nine o'clock a. m.

Court met pursuant to adjournment.

UNITED STATES *vs.* WILLIAM L. LEDBETTER.	4134.	R. L. D. Arraignment. Plea.

This day this cause coming on to be heard, plaintiff appearing by Chas. D. Fullen, U. S. district attorney, and defendant, William L. Ledbetter, appearing in person and by H. C. Reiner and W. F.

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Garret, his attorneys, and, being now arraigned and the indictment read to him, answers that his true name is William L. Ledbetter, and for plea in open court enters his plea of not guilty.

Thereupon, on the 1st day of May, 1896, the following, among other, proceedings were had, to wit:

FRIDAY MORNING, *May* 1—9 o'clock a. m.

Court met pursuant to adjournment.

UNITED STATES
vs.
WILLIAM L. LEDBETTER. } 4134. R. L. D.

This day this cause coming on to be heard on the plea of
7 not guilty heretofore entered in this cause, plaintiff appearing by Chas. D. Fullen, U. S. district attorney, and defendant, William L. Ledbetter, appearing in person and by H. C. Reiner and W. F. Garrett, his attorneys, and this cause now coming on for trial, there came a jury of twelve good and lawful men, who were duly empaneled and sworn and whose names are as follows, to wit: E. D. Young, foreman; M. F. Burket, G. K. Dunn, Geo. Smith, F. W. Grubb, C. Scott, R. B. Vermilya, Al. Davison, Geo. Haessig, H. M. Bowman, H. Brinck, J. B. Eyestone; and thereupon the parties began the taking of testimony and continued so to do until the hour of adjournment.

Thereupon, on the 2d day of May, 1896, the following, among other, proceedings were had, to wit:

SATURDAY MORNING, NINE O'CLOCK A. M., *May* 2, 1896.

Court met pursuant to adjournment.

UNITED STATES
vs.
WILLIAM L. LEDBETTER. } 4134. R. L. D. Marshal Ordered to Furnish Meals to Jury while Deliberating. Verdict.

This day came the parties, attorneys and jury heretofore empaneled, and the trial being resumed and the evidence being now all in and the arguments of counsel *pro* and *con.*, the court now instructs the jury, and the jury retire to consider of their verdict, and the marshal of this district is hereby ordered to furnish meals, at the expense of the Government, to this jury in this cause while de-
liberating, and the jury, having deliberated, does now return
8 into open court their verdict in the following words, to wit:

"We, the jury, find the defendant above named guilty as charged in the indictment in count one.

(Signed) E. D. YOUNG, *Foreman.*"

Thereupon, on the 4th day of May, 1896, the defendant filed a motion in arrest of judgment, which is in the words and figures following, to wit:

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In the District Court of the United States in and for the Southern District of Iowa, Eastern Division, April Term, 1896.

UNITED STATES OF AMERICA
vs.
L. W. LEDBETTER. } Motion.

Now comes the defendant above, by his attorneys, and moves the court for arrest of judgment, for the reason that the indictment under which defendant was tried was defective, in that it stated merely conclusions of law; that the charges therein were stated in such general terms that it was impossible for the defendant to learn the particulars which constituted the crime charged; that the defendant, following a customary practise in similar cases, made a request for the particulars of such charges of the U. S. district attorney and was refused; that by reason of such insufficient indictment and the refusal of the prosecution to furnish bill of particulars the defendant was unable to make preparation to meet the evidence of the prosecution; whereas if said indictment had been sufficient and said bill of particulars had been furnished he would have been able to meet and controvert the material evidence submitted by the prosecution.

(Signed) W. F. GARRETT,
H. C. REINER,
Att'ys for Defendant.

STATE OF IOWA, }
County of Lee, } *ss:*

I, H. C. Reiner, being on oath, say that I am the H. C. Reiner above named; that I am familiar with the statements made in the foregoing motion, and same are true, as I verily believe.

(Signed) H. C. REINER.

Subscribed and sworn to before me this 4th day of May, 1896.

(Signed) WILLIAM J. SCHLOTTER,
Notary Public.

Endorsed: Filed May 4, 1896. J. J. Steadman, clerk. Chas. J. Smith, deputy.

And thereafter, on the 7th day of May, 1896, leave of court being first had and obtained, defendant filed an amendment to said motion in arrest, which amendment is in the words and figures following, to wit:

10 In the District Court of the United States in and for the Southern District of Iowa, Eastern Division, April Term, 1896.

THE UNITED STATES
vs.
L. W. LEDBETTER. } Amendment to Motion in Arrest of Judgment.

And now comes the defendant and moves the court to arrest judgment on each and every count in the indictment herein upon

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which the defendant was convicted, because the facts therein stated do not constitute an offense against the laws and statutes of the United States.

W. F. GARRETT,
H. C. REINER,
W. C. HOWELL,
Att'ys for Defendant.

Endorsed: Filed May 7, 1896. J. J. Steadman, clerk. Chas. J. Smith, deputy.

11 The court, having heard the argument on the motion in arrest of judgment and having considered same, overruled said motion; which order is in words and figures as follows, to wit:

THURSDAY MORNING, *May* 7, 9 o'clock a. m., 1896.

Court met pursuant to adjournment.

UNITED STATES *vs.* WILLIAM L. LEDBETTER.	4134. R. L. D. Motion in Arrest of Judgment Overruled. Judgment and Sentence.

This day came the plaintiff, by Charles D. Fullen, U. S. district attorney, and defendant, William L. Ledbetter, appearing in person and by W. F. Garrett, H. C. Reiner, and William C. Howell, his attorneys, and, the cause now coming on for hearing on defendant's motion in arrest of judgment, the court, having heard the arguments of counsel and being advised in the premises, doth overrule said motion in arrest of judgment; to which ruling of the court defendant at the time excepted.

Thereupon the court proceeded to render judgment in this cause, which is in the words and figures as follows, to wit:

And thereupon, the cause coming on for judgment and sentence upon the verdict of guilty heretofore rendered, the court, being fully advised in the premises, doth order, adjudge, and consider that defendant, William L. Ledbetter, pay to the United States of America the sum of two hundred and fifty dollars as a fine and the costs of prosecution, taxed at $—.

12 And it is by the court further ordered and adjudged that defendant, William L. Ledbetter, be imprisoned in the jail of Lee county, Iowa, at Keokuk, for a period of thirty days.

It is by the court further ordered and directed that upon the payment of fine and costs no mittimus shall issue unless ordered by the court.

Thereupon, on the 8th day of May, the following, among other, proceedings were had, to wit:

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FRIDAY MORNING, *May* 8, *A. D.* 1896—9 o'clock a. m.

Court met pursuant to adjournment.

UNITED STATES
vs.
WILLIAM L. LEDBETTER. } 4134. R. L. D. Order Fixing Amount of Supersedeas Bond.

This day this cause coming on to be heard on plaintiff's application to the court to fix the amount of a supersedeas bond, and the court, having considered said motion and being advised in the premises, doth fix the amount of the supersedeas bond in this case at the sum of one thousand dollars, and defendant is granted sixty days in which to prepare, have signed, and file bill of exceptions.

Thereafter, on the 6th day of July, 1896, defendant filed his bill of exceptions, which was allowed by the court, in the clerk's office; which said bill of exceptions is in the words and figures following, to wit:

13 In the United States District Court, Southern District of Iowa.

UNITED STATES
vs.
WILLIAM L. LEDBETTER. } Bill of Exceptions.

Be it remembered that upon the 28th day of April, 1896, the grand jury of the United States in and for the southern district of Iowa returned into court an indictment against Lewis W. Ledbetter, duly endorsed by the foreman of said grand jury as a true bill; which indictment is in the words and figures as follows, to wit:

In the District Court of the United States in and for the Southern District of Iowa, April Term, 1896.

The grand jurors of the United States of America duly empaneled, sworn, and charged to inquire in and for the body of said southern district of Iowa, at a term of the United States district court begun and held at Keokuk, in said district, on the 14th day of April, A. D. 1896, in the name and by the authority of the United States of America, upon their oaths do find and present that Lewis Ledbetter, late of said district, heretofore, to wit, on the — day of April, A. D. 1896, in the county of Appanoose, in the southern district of Iowa, and within the jurisdiction of this court, did then and there wilfully, unlawfully, and feloniously carry on the business of a retail liquor dealer without having paid the special tax therefor, as required by law, contrary to the statute in such case made and provided and against the peace and dignity of the United States of America.

Second count. And the grand jurors aforesaid upon their oaths aforesaid do further find and present that the said Lewis
14 Ledbetter, late of said district, heretofore, to wit, on the — day of April, A. D. 1896, in the county of Appanoose, in the

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southern district of Iowa, and within the jurisdiction of this court, did then and there wilfully, unlawfully, and feloniously carry on the business of a retail dealer in malt liquors without having paid the special tax therefor, as required by law, contrary to the statute in such case made and provided and against the peace and dignity of the United States of America.

(Signed) CHAS. D. FULLEN,
United States Attorney.
H. M. EICHER,
Ass't United States Attorney.

No. 4134.
A true bill.
(Signed) EDW. CAMPBELL, *Foreman.*

Presented in open court by the foreman of the grand jury in the presence of said grand jury and filed by me in their presence this 28th day of April, A. D. 1896.

(Signed) J. J. STEADMAN, *U. S. Clerk,*
By —— ——, *Deputy.*

The said defendant, on the 30th day of April, 1896, having been called to the bar to plea and said indictment having been read to him, said his name was William L. Ledbetter, and thereupon entered a plea of "not guilty."

On the 1st day of May, 1896, the defendant was duly put on trial before a jury, and thereupon testimony was offered on behalf of the Government to sustain the charges of said indictment.

The Government having rested, the defendant thereupon introduced testimony.

15 And the defendant having rested the Government thereupon introduced in rebuttal testimony.

And the case having been fully submitted and the jury instructed, the jury, on the 2d day of May, 1896, returned the following verdict, to wit:

"We, the jury, find the defendant above named guilty as charged in the indictment in count one."

The defendant was present in open court during all of the proceedings had therein.

And thereupon, on the 7th day of May, 1896, the defendant filed a motion in arrest of judgment, which is in words and figures as follows, to wit:

In the District Court of the United States in and for the Southern District of Iowa, Eastern Division, April Term, 1896.

UNITED STATES }
vs. } Motion.
W. L. LEDBETTER. }

Now comes the defendant above, by his attorneys, and moves the court for arrest of judgment for the reason that the indictment

under which the defendant was tried was defective, in that it states merely conclusions of law; that the charges therein were stated in such general terms that it was impossible for the defendant to learn the particulars which constituted the crime charged; that the
16 defendant, following a customary practice in similar cases, made a request for the particulars of such charges of the U. S. district attorney and was refused; that, by reason of such insufficient indictment and the refusal of the prosecution to furnish bill of particulars, the defendant was unable to make preparation to meet the evidence of the prosecution, whereas if said indictment had been sufficient and said bill of particulars had been furnished he would have been able to meet and controvert the material evidence submitted by the prosecution.

(Signed) W. F. GARRETT,
H. C. REINER,
Att'ys for Defendant.

STATE OF IOWA, }
County of Lee. }

I, H. C. Reiner, being on oath, say that I am the H. C. Reiner above named; that I am familiar with the statements made in the foregoing motion and same are true, as I verily believe.

(Signed) H. C. REINER.

Subscribed and sworn to before me this 4th day of May, 1896.

(Signed) WILLIAM J. SCHLOTTER,
Notary Public.

Endorsed: Filed May 4, 1896. J. J. Steadman, clerk. Chas. J. Smith, deputy.

17 Thereafter, on the 7th day of May, 1896, by leave of court first had and obtained, the defendant filed an amendment to his motion in arrest of judgment, which is in words and figures as follows, to wit:

In the District Court of the United States in and for the Southern District of Iowa, Eastern Division, April Term, 1896.

THE UNITED STATES } Amendment to Motion in Arrest of Judgment.
vs.
W. L. LEDBETTER. }

And now comes the defendant and moves the court to arrest judgment on each and every count in the indictment herein upon which the defendant was convicted, because the facts therein stated do not constitute an offense against the laws and statutes of the United States.

(Signed) W. F. GARRETT,
H. C. REINER,
W. C. HOWELL,
Att'ys for Defendant.

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Endorsed: Filed May 7, 1896. J. J. Steadman, clerk. Chas. J. Smith, deputy.

18 And thereafter, said motion having been submitted to the court, the court overruled the same; to which ruling at the time defendant duly excepted, and the exception was duly allowed by the court; and thereupon, on the same day, the court proceeded, in the presence of the defendant in person, to pronounce judgment, which is in words and figures as follows, to wit:

It is ordered, adjudged, and considered that the defendant pay to the United States of America the sum of two hundred fifty dollars ($250.00) as a fine and costs of prosecution, taxed at $—; and it is further ordered and adjudged that the defendant be imprisoned in the jail of Lee county, Iowa, at Keokuk, for a period of thirty days and stand committed until said fine and costs are paid; and it is by the court further ordered and directed that upon payment by the said William L. Ledbetter of the said fine and costs the sentence of imprisonment be suspended.

To which order and judgment the defendant at the time duly excepted, and which exception was duly allowed by the court.

On the 8th day of May, 1896, the court made an order fixing the bond for a writ of error at the sum of $1,000.00, and ordered that defendant have sixty days from that date to prepare, have signed, and file a bill of exceptions.

Now, then, this bill of exceptions having been presented to the Honorable Jno. S. Woolson, judge of the United States court for the southern district of Iowa, said bill of exceptions is hereby allowed and signed this 20th day of June, 1896.

(Signed) JNO. S. WOOLSON,
U. S. District Judge.

Endorsed: Filed July 6, 1896. J. J. Steadman, clerk, by Chas. J. Smith, deputy.

19 I, J. J. Steadman, clerk of the district court of the United States in and for the southern district of Iowa, hereby certify that the foregoing is a true copy of the record in the case of The United States *vs.* William L. Ledbetter, No. 4134 on the docket of said court.

I further certify that hereto annexed are true copies of petition for writ of error and the assignment of errors, a true copy of the bond on writ of error, with the approval thereof, and also the original citation, with the officer's return of service thereon.

In testimony whereof I hereunto set my hand and affix the seal of said district court in said district this 6th day of July, 1896.

{ Seal of District Court of the U. S., Southern District of Iowa, Keokuk. }

J. J. STEADMAN, *Clerk.*
By CHAS. J. SMITH, *Deputy.*

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20 UNITED STATES OF AMERICA, *ss:*

UNITED STATES
vs.
WILLIAM L. LEDBETTER.

Petition for a Writ of Error.

To the honorable the justices of the Supreme Court of the United States or the judge of the district court of the United States for the southern district of Iowa:

And now comes the defendant, William L. Ledbetter, and complains that in the records and proceedings and also in the rendition of judgment in the plea between the United States and himself, defendant, tried in the district court of the United States for the southern district of Iowa at the April term, 1896, in which judgment was rendered against him on the 7th day of May, 1896, manifest error hath intervened, to the great damage of said defendant; wherefore he prays for an allowance of a writ of error and such further processes as may cause the same to be corrected by the Supreme Court of the United States.

(Signed) W. F. GARRETT,
H. L. REINER,
WILLIAM C. HOWELL,
Att'ys for Defendant.

Endorsed: Filed June 11, 1896. J. J. Steadman, clerk, by Chas. J. Smith, deputy.

21 In the United States District Court, Southern District of Iowa.

UNITED STATES
vs.
WILLIAM L. LEDBETTER, Def't.

Assignment of Error.

The defendant, having filed his petition for a writ of error to the Supreme Court of the United States, makes the following assignment of errors, and submits the same to the Honorable John S. Woolson, district judge:

First. The said district court erred in overruling the defendant's motion for an arrest of judgment.

Second. The said district court erred in refusing to rule, as requested by the defendant, that the motion in arrest of judgment should be sustained.

Third. That said district court erred in refusing to rule, as requested by the defendant, that the indictment was insufficient, and that the indictment did not state facts which would constitute an offense against the laws and statutes of the United States, and in refusing an arrest of judgment, because the indictment did not allege that the defendant sold or offered for sale foreign or domes-

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tic distilled spirits, wines, or malt liquors otherwise than as provided by law, or any of said liquors, or to whom said liquors were sold or offered for sale, and because the indictment did not allege that the defendant had sold or offered for sale any of said
22 liquors in quantities less than five wine gallons at the same time, and because the indictment did not allege that the defendant had not paid $25.00, which is the amount of the tax provided by the statute, and because the indictment did not allege that the offense was committed in any city or town in Appanoose county or in any place certain in any city or town in Appanoose county, and because the indictment did not allege that the offense was committed on any day prior to the finding of the indictment.

Fourth. The court erred in refusing to rule, as requested by defendant, that the indictment was insufficient and did not state facts constituting an offense under the laws of the United States, and in refusing to arrest judgment therefor, because the indictment did not allege or charge that the offense was committed on any day prior to the finding of the indictment, for that the only time alleged in the indictment when the offense was committed is the month of April, 1896, and the indictment was found by the grand jury and returned into court on April 28th, 1896.

Fifth. The court erred in refusing to arrest the judgment as requested by defendant, and in overruling said motion in arrest of judgment, and in ruling that the indictment did state facts constituting an offense against the laws and statutes of the United States, because the facts which constituted the offense are not stated in the indictment; because the circumstances of the offense are not given in the indictment; because the allegations of the indictment are only a legal conclusion, unsupported by the primary and individualizing facts which constituted the offense; because the ingredient facts of which the offense is composed are not accurately
23 and clearly alleged in the indictment; because the material facts sufficient to support a conviction are not alleged in the indictment; because no facts are stated in the indictment which would warrant the court in pronouncing judgment upon the verdict of the jury; because the indictment does not show how the offense was committed or when it was committed or where it was committed with sufficient particularity; because no sufficient facts are alleged in the indictment to inform the defendant sufficiently for him to meet the charge against him or to inform him of the facts relied upon to support a conviction, and because there are no sufficient facts stated in the indictment to identify the offense charged against the defendant so that the same could be plead in bar by said defendant after the trial as a former conviction or acquittal.

(Signed) W. F. GARRETT,
H. L. REINER,
WILLIAM C. HOWELL,
Attorneys for Defendant.

Endorsed: Filed June 11, 1896. J. J. Steadman, clerk, by Chas. J. Smith, deputy.

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The above assignment of errors was presented to me this 20th day of June, 1896, and allowed. As to the fourth assignment and last clause of third assignment of errors above stated, I hereby certify that such assignment and the points therein made were never presented to or urged to the court at any time during or before the trial of the case, nor in the motion in arrest or amendment thereto, nor by counsel in argument, but that such points for the first time now appear and in the above assignment.

(Signed) JNO. S. WOOLSON,
U. S. District Judge.

Endorsed: Filed Jul- 6, 1896. J. J. Steadman, clerk, by Chas. J. Smith, deputy.

24 In the United States District Court for the Southern District of Iowa, Eastern Division.

UNITED STATES
vs.
WILLIAM L. LEDBETTER, Def't.

Supersedeas Bond.

Know all men by these presents that we, William Ledbetter, as principal, and J. H. Carr, as surety, are held and firmly bound unto the United States in the penal sum of $1,000.00; for payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, firmly by these presents.

In witness whereof we have hereunto signed and sealed these presents this 21st day of May, 1896.

Whereas the above-named William Ledbetter has presented an appeal to the Supreme Court of the United States to reverse the order and judgment of the said district court entered on the 7th day of May, 1896, in cause No. 4134, wherein the said court entered an order and judgment that the said William Ledbetter pay a fine of $250.00 and costs and be imprisoned in jail at Keokuk for thirty days, and that on payment of fine and costs sentence be suspended:

25 Now, therefore, the condition of this obligation is such that if the above-named William Ledbetter shall prosecute said appeal to effect and answer all damages and costs and perform all the orders of this court and the Supreme Court of the United States, and shall satisfy and fulfil the further orders and judgment of this court and the Supreme Court made in this cause, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

(Signed) WM. L. LEDBETTER. [L. S.]
J. H. CARR. [L. S.]

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STATE OF IOWA, }
Appanoose County, } *ss:*

I, J. H. Carr, being duly sworn, state that I am the surety who signed the above bond; that I am worth in property not exempt from execution more than that of the sum of $2,000.00.

(Signed) J. H. CARR.

Subscribed and sworn to before me this 21 day of May, 1896.

[SEAL.] (Signed) HENRY P. POWERS,
Notary Public.

I, D. R. Guernsey, clerk of the district court of Appanoose county, hereby certify that if the above bond was presented to me for approval that I should consider the same good and would approve it.

[SEAL.] (Signed) D. R. GUERNSEY,
Clerk of the Dis'ct Court, Appanoose Co.

26 The above bond, being presented to me, is approved this 27th day of May, 1896.

(Signed) JNO. S. WOOLSON,
U. S. District Judge.

Endorsed: Filed Jul- 6, 1896. J. J. Steadman, clerk, by Chas. J. Smith, deputy.

27 *Citation on Writ of Error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the United States of America, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at Washington, D. C., on the 20 day of July, 1896, pursuant to a writ of error filed in the clerk's office of the district court of the United States for the southern district of Iowa in a cause entitled The United States, by indictment, *vs.* William L. Ledbetter, defendant, wherein said defendant is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against said plaintiff in error, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable John S. Woolson, judge of the district court of the United States for the southern district of Iowa, this 20th day of June, 1896.

JNO. S. WOOLSON,
United States District Judge.

Due and legal service of the above citation on writ of error upon the United States is hereby acknowledged this 25th day of June,

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1896, and a true and attested copy of said citation is in hand in this southern district of Iowa.

CHAS. D. FULLEN,
U. S. Att'y for the Southern District of Iowa.

Filed Jul- 6, 1896.

J. J. STEADMAN, *Clerk*,
By CHAS. J. SMITH, *Deputy*.

Endorsed on cover: Case No. 16,334. S. Iowa D. C. U. S. Term No., 196. William L. Ledbetter, plaintiff in error, *vs.* The United States. Filed July 13th, 1896.

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No. 196.

FILED,
DEC 1 1897
JAMES H. McKENNEY,
CLK

Brief of Howell & Howell for P. E.

Filed Dec. 1, 1897.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 196.

WILLIAM L. LEDBETTER, PLAINTIFF IN ERROR,

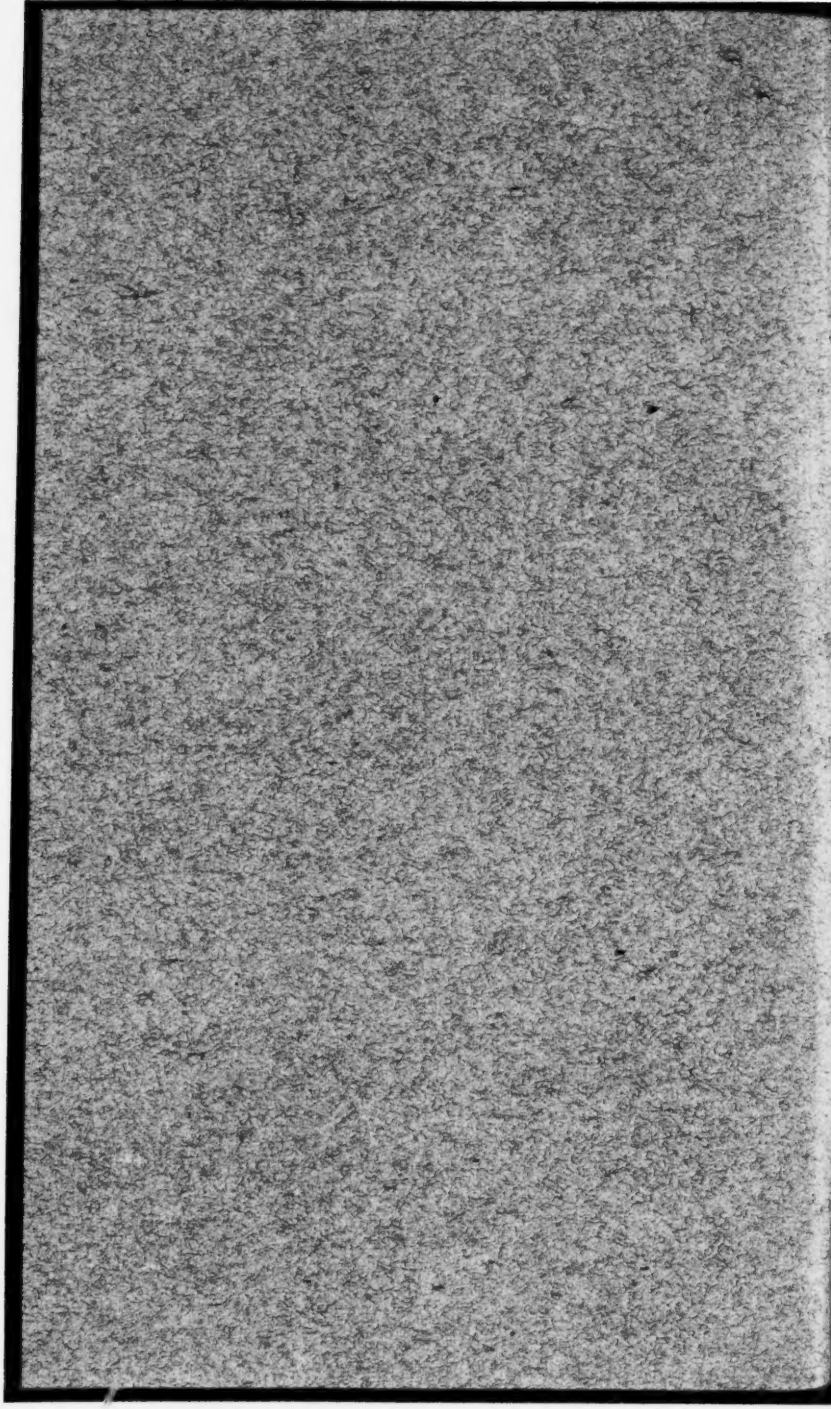
vs.

THE UNITED STATES.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF IOWA.

BRIEF AND ARGUMENT IN BEHALF OF THE PLAINTIFF IN ERROR.

H. SCOTT HOWELL AND WILLIAM C. HOWELL,
FOR PLAINTIFF IN ERROR.



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SUPREME COURT OF THE UNITED STATES,

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vs.

THE UNITED STATES.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF IOWA.

BRIEF AND ARGUMENT IN BEHALF OF THE PLAINTIFF IN ERROR.

H. SCOTT HOWELL AND WILLIAM C HOWELL, FOR THE PLAINTIFF IN ERROR.

STATEMENT OF CASE.

On the 28th day of April, 1896, the Grand Jury for the Southern District of Iowa, returned into court, an indictment against the plaintiff in error. The crime with which the defendant was charged, is the violation of Section 3242 and 3244, U. S. R. S., as amended by the act of March, 1879, Chapter 125, 20, St. at Large 333, relating to the carrying on the business of a retail dealer in liquors, and the payment of the special tax therefor.

The Statute is as follows: "*That any person who shall carry on the business of a rectifier, wholesale liquor dealer, retail liquor dealer, wholesale dealer in malt liquors, or manufacturer of stills without having paid the special tax as required by law, shall for every such offence, be fined not less than $100 00, nor more than $5000 00, and imprisoned not less than thirty days, nor more than two years.* * * * * * * "*That retail dealers in liquors pay $25 00. Every person who sells or offers for sale foreign or domestic distilled spirits, wines or malt liquors, otherwise than as hereinafter provided, in less quantities than five wine gallons at the same time, shall be regarded as a retail dealer in liquors.*"

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The indictment charges that the defendant, "on the..... day of April, 1896, in the County of Appanoose, in the Southern District of Iowa, and within the jurisdiction of this court, did then and there, wilfully, unlawfully and feloneously *carry on the business of a retail liquor dealer without having paid the special tax therefor, as required by law.*"

The defendant was convicted and a motion in arrest of judgment was made, because the facts stated in the indictment, do not constitute an offence against the laws and statutes of the United States.

SPECIFICATION OF ERRORS.

The first objection urged to the indictment is, that it does not state any facts which constitute a crime, in that it fails to allege;

First: That the defendant *sold or offered for sale* liquors.

Second: That the liquors were either *foreign or domestic distilled spirits, wines or malt liquors.*

Third: That such liquors were sold or offered for sale in quantities *less than five wine gallons.*

Fourth: That such liquors were sold or offered for sale in such less quantities *at the same time.*

The second objection urged to the indictment is, that it does not comply with the constitutional requirement, and inform the defendant "of the nature and cause of the accusation" in that the indictment does not allege the facts and circumstances, with sufficient particularity, as to the time and place and means, to apprise the defendant of the crime with which he is charged.

The third objection to the indictment is, that it does not allege that any crime was committed at a date prior to the finding of the indictment.

BRIEF AND ARGUMENT.

It is necessary for every indictment to set forth the primary and individualizing facts disconnected from legal conclusions, and it must state the constituent facts and circumstances, necessary to bring the accused perfectly within the statutory provisions.

An indictment at common law as well as under a statute, must give the defendant the identifying information to which in reason and by the rule of good pleading he is entitled, and must acquaint him with the particular nature of the accusation. It must fully state the offence, and even if this cannot be done in the statutory words, it must be expanded beyond them. It must embrace all the elements which the law recognizes in the offence, whether they

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are mentioned in the statute, or come from it by construction, and must state the particular facts and circumstances, which render the defendant guilty of the offence charged.

1 Bishop on Crim. Proc., Sections 331, 623-626.

The opinion of Mr. Chief Justice Waite, in the well considered case of United States vs. Cruikshank, et al., 92 U. S., 542, 557, so completely supports the first and second objections urged to this indictment, and has been so often cited and followed, I will quote from it at length.

In considering the fifth, thirteenth, eighth and sixteenth counts in the indictment, he says:

"According to the view we take of these counts, the question is not, whether it is enough, in general, to describe a statutory offence in the language of the statute, but whether the offence has here been described at all. The statute provides for the punishment of those who conspire "to injure, oppress, threaten, or intimidate any citizen, with intent to prevent or hinder his free exercise and enjoyment of any right or privilege granted or secured to him by the constitution or laws of the United States." These counts in the indictment charge, in substance, that the intent in this case was to hinder and prevent these citizens in the free exercise and enjoyment of "every, each, all and singular" the rights granted them by the constitution, etc. There is no specification of any particular right. The language is broad enough to cover all."

"In criminal cases, prosecuted under the laws of the United States, the accused has the constitutional right 'to be informed of the nature and cause of the accusation.' Amend. VI. In United States vs. Mills, 7 Pet. 142, this was construed to mean that the indictment must set forth the offence 'with clearness and all necessary certainty, to apprise the accused of the crime with which he stands charged;' and in United States vs. Cook, 17 Wall. 174, that 'every ingredient of which the offence is composed must be accurately and clearly alleged.' It is an elementary principle of criminal pleading, that where the definition of an offence, whether it be at common law or by statute, includes generic terms, it is not sufficient that the indictment shall charge the offence in the same generic terms as in the definition; but it must state the species—it must descend to particulars. The object of the indictment is, first, to furnish the accused with such a description of the charge against him as will enable him to make his defense, and avail himself of his conviction or acquittal for protection against a further prosecution for the same cause; and, second, to inform the court of the facts alleged, so that

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it may decide whether they are sufficient in law to support a conviction, if one should be had. For this, facts are to be stated, not conclusions of law alone. A crime is made up of acts and intent; and these must be set forth in the indictment, with reasonable particularity of time, place and circumstances."

"It is a crime to steal goods and chattels; but an indictment would be bad that did not specify with some degree of certainty the articles stolen. This, because the accused must be advised of the essential particulars of the charge against him, and the court must be able to decide whether the property taken was such as was the subject of larcency. So, too, it is in some states a crime for two or more persons to conspire to cheat and defraud another out of his property; but it has been held that an indictment for such an offence must contain allegations setting forth the means proposed to be used to accomplish the purpose. This, because, to make such a purpose criminal, the conspiracy must be to cheat and defraud in a mode made criminal by statute; and as all cheating and defrauding has not been made criminal, it is necessary for the indictment to state the means proposed, in order that the court may see that they are in fact illegal. * * * * * * * * * The accused has therefore, the right to have a specification of the charge against him in this respect, in order that he may decide whether he should present his defence by motion to quash, demurrer, or plea; and the court, that it may determine whether the facts will sustain the indictment. So here, the crime is made to consist in the unlawful combination with an intent to prevent the enjoyment of any right granted or secured by the constitution, etc. All rights are not so granted or secured. Whether one is so or not is a question of law, to be decided by the court, not the prosecutor. Therefore, the indictment should state the particulars, to inform the court as well as the accused. It must be made to appear - that is to say, appear from the indictment, without going further—that the acts charged will, if proved, support a conviction for the offence alleged."

"Offences created by statute, as well as offences at common law, must be accurately and clearly described in an indictment; and if the offence cannot be so described without expanding the allegations beyond the mere words of the statute, then it is clear that the allegations of the indictment must be expanded to that extent, as it is universally true that no indictment is sufficient which does not accurately and clearly allege all the ingredients of which the offence is composed, so as to bring the accused within the true intent and meaning of the statute defining the offence. Every offence consists of certain acts done or omitted under certain circumstances; and, in

the indictment for the offence, it is not sufficient to charge the accused generally with having committed the offence, but all the circumstances constituting the offence must be specially set forth."

"Indictments for offences created and defined by statute must in all cases follow the words of the statute; and, where there is no departure from that rule, the indictment is in general sufficient, except in cases where the statute is elliptical, or where, by necessary implication, other constituents are component parts of the offence; as where the words of the statute defining the offence have a compound signification, or are enlarged by what immediately precedes or follows the words describing the offence, and in the same connection."

Authorities almost without limit, can be cited to show that it is necessary for an indictment to contain every element of the offence defined by the statute, and such facts and particular circumstances, as will give the defendant fair notice of the charge, and which will enable the court from the facts alleged and not from mere legal conclusions, to say that a crime has been committed, and to state such facts and circumstance with such a degree of particularity, as will enable the defendant to plead the indictment against a subsequent prosecution for the same offence.

Bish. Stat. Crimes, Sections 418-21-22.

1 Bish. Cr. Proc. { Sections 98a-519-526.
" 593-612-614 (2)-624 (1-2).

1 Whar. Cr. Proc., 2.
Whar. Cr. Pl. and Proc., Sec. 151-2-3-4.
Whar. Cr., Law, Sec. 132.
Whar. Cr , Law, Sec. 1841.
1 Arch. Cr., Law, Sec. 281-2-3.
1 Arch. Cr., Proc., Sec. 291.
41 Iowa, 580, State vs. Murray, et al.
9 Bis. 472, U. S. vs. Taylor.
124 U. S., 483, U. S. vs. Hess.
148 U. S., 197, Pettibone vs. U. S.
16 Blatchf (C. C.,) 350, U. S. vs. Bennett.
L. R. 32, B Div. 616, Bradlaugh vs. Reg.
32 U. S. 138, U. S. vs. Mills.
32 Fed. Rep., 147, U. S. vs. Morrisey.
7 Bis. 129, U. S. vs. Nunnemacher.
29 Fed. 287, U. S. vs. Wilson.
77 Va. 52, Boyd vs Comm.
5 Denio 76, People vs. Allen.
88 Mo. 631, State vs. Gabriel.

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3 McCord, Law, 533, State vs. Raines.
25 Tex. 654, State vs. Barns.
25 Tex. 664, Millican vs State.
35 Ind. 485, Quinn vs. State.
1 Mich. 217, People vs. Richards.
10 Mich. 310, People vs. Clark.
43 Mich. 417 Hall vs. People.
43 N. H. 83, State vs. Parker.

FIRST.

This indictment offends the most primary and elementary rule of good pleading, for it fails to allege even in the language of the statute, the facts which constitute the crime. It is only when a person *sells* or *offers for sale* certain specified liquors, to-wit, *foreign or domestic distilled spirits, wines or malt liquors* and in certain quantities, to-wit; in quantities *less than five wine* gallons, at the *same time*, and without paying the special tax of $25.00, as provided by law, that he can be guilty of violating the Internal Revenue law, by carrying on the business of a retail liquor dealer. The statute has defined the term "Retail Liquor Dealer," and it is only when the indictment employs the words of the statute the crime can be properly charged. Section 3242 R. S., fixes the penalty for violating the law, but this does not relieve the pleader from setting forth in the indictment, the words of the statute which defines the offence. The punishment under the statute is severe. It is made an infamous crime, and a conviction makes the penitentiary a fearful possibility to the defendant.

There is great reason therefore, that the indictment should state with particularity, the facts relied upon by the government for a conviction.

It would be as reasonable to claim that an indictment for murder or larceny, or embezzlement, or rape, charging the offence by these names would be good, as to claim that the general charge of "retail liquor dealer" defines any crime. It is a technical name given by the statute to a business, which when carried on *in a certain way*, requires the payment of a certain tax. The ordinary meaning of the words, does not contain the specific meaning put on them by the statute.

Webster defines liquor, as "any fluid or fluid substance, as water, blood, sap, juice and the like. "2. Especially alcoholic or spirituous fluids, either distilled or fermented, a decoction, solution or tincture."

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Retail is defined by the same authority as "the sale of commodities in small quantities or parcels, or at second hand."

There is nothing in the generic meaning of the words "liquors" and "retail", which reasonably indicates the kinds of liquors and the quantities forbidden by the United States statute, to be sold without the payment of the special tax of $25.00. Even fermented alcoholic liquors, such as cider, do not require the payment of the special tax.

The statute has made an artificial definition of the word "retail." There is nothing in the ordinary use of the word to indicate that a dealer who sells in quantities less than five gallons, is a "retailer," and one who sells in greater quantities, is a "wholesaler." The word has a specific meaning in the statute which is not found in its generic sense.

The statute only prohibits the business in being carried on in two ways, either by selling or offering for sale. Putting liquors on exhibition, for the purpose of advertisement, without selling or offering to sell, might in some cases be a method of carrying on the liquor business. Travelling men taking orders from samples, is one of the methods of conducting this business. But such a carrying on of the business, is not in violation of the law. How can the court, from this indictment, say, that the defendant ever sold or offered for sale any liquors whatever; how can it say, that the liquors were foreign or domestic distilled spirits, wines or malt liquors; how can it say that any or all of these liquors were sold in quantities less than five wine gallons at the same time. Yet all these facts must be proven to convict the defendant. They are the primary elements of which this offence is composed, and whatever is indispensably necessary to be proved to warrant a conviction, must be alleged in the indictment.

State vs. Wilson, 2 Mill, 135.

State vs. Philbrick, 31 Me., 401.

Every milkman, every grocery keeper, every druggist, is a retail liquor dealer, within the generic meaning of these terms, but such fact does not require them to pay a special tax to conduct their business. Whether or not a crime has been committed is a question of law for the court to determine from the facts alleged in the indictment, and it is not left to the decision of the prosecutor. As is tersely stated in U. S. vs. Cruikshank, *supra*; "It must be made to appear—that is to say appear from the indictment, without going further—that the acts charged will, if proved, support a conviction for the offence alleged."

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The term "dealer" has been defined by various courts and text writers of recognized authority. The American and English Encyclopedia of Law, Vol. 5, at page 123, says: "A dealer is therefore one who makes a business of buying and selling; he is the middleman between the producer and consumer." Norris Bros. vs. Comm., 27 Pa. St., 494. "A dealer is one who buys goods, etc., and sells the same goods at a profit."

Barton vs. Morris, 10 Phila. (Pa.,) 360, "A farmer who sells the products of his farm and occasionally that of his neighbor at a market stand, is not a dealer. He does not buy he only sells."

Overall vs. Bezeau, 37 Mich., 560, "A dealer is one who makes successive sales as a business. One who owns a quantity of liquors and sold them in gross, is not a wholesale dealer within a revenue act; by doing so, he shows a determination not to be a dealer."

A few instances of selling liquors in small quantities by one having no bar-room and none of the usual appliances of liquor dealers, and with no intention apparent of defrauding the national revenue is not sufficient to convict one of carrying on the liquor busines without a license.

U. S. vs. Jackson, 1 Hughes, 531.
U. S. vs. Feigelstock, 14 Blachf., 321.

A grocer, who without obtaining a license for selling liquors purchases a barrel of whiskey for a customer, and enters on his books a charge against his customer for the price at which it was actually obtained from the liquor dealer, does not transgress the spirit of the revenue laws. U. S. Howell, 20, Fed., 718.

The gratuitous distribution of spirits at a gaming table does not constitute a retail liquor dealer in spiritous liquors. U. S. vs. Mickle, 1 Chanch (C. C.,) 268.

Supplying a friend as a matter of accommodation merely from liquors on hand for private use, is not carrying on the business of a retail liquor dealer, altho money is received for it.

U. S. vs. Rennick, 28th Fed., 847.
U. S. vs. Jackson, 1 Hughes 532.

Vinters may sell the wine of their growth at the place where it is made without paying the special tax. Sec. 5. Chapt. 125, 20 St. at Lg., page 334.

Apothecaries who use wines and spiritous liquors in the preparation or making up of medicine, are not required to pay the tax. Sec. 5, Chapt. 125, 20 St. at Lg., 334.

These cases show that it is impossible to charge any crime by the use of the words "carrying on the business of a retail liquor dealer," because the words have no necessary meaning either in the generic sense, or as construed by the courts, which makes the act described a violation of the Federal Statute.

In the case of Pettibone vs. U. S., 148 U. S., 197, Mr. Chief Justice Fuller, quotes with approval the language in the opinion of U. S. vs. Carll, 105, U. S., 611, as follows:

"In an indictment upon a statute, it is not sufficient to set forth the offence in the words of the statute, unless those words of themselves fully, directly, and expressly, without any uncertainty or ambiguity, set forth all the elements necessary to constitute the offence intended to be punished; and the fact that the statute in question, read in the light of the common law, and of other statutes on like matter, enables the court to infer the intent of the legislature, does not dispense with the necessity of alleging in the indictment all the facts necessary to bring the case within that intent."

Tested therefore by the most elementary rule of pleading, that an indictment based upon a statute, must at least charge the crime in the language of the statute, this indictment utterly fails to allege any facts, which are defined by the statute to be a crime.

SECOND.

The accused has the right under the Sixth Amendment to the Constitution of the United States "to be informed of the nature and cause of the accusation." This has been held to mean (U. S. vs. Cruikshank, *supra*), that the indictment must furnish the accused with such a description of the charge against him, as will enable him to make his defense and avail himself of his conviction or acquittal, for protection against a further prosecution for the same cause.

Without seeking to apply the technical criticism of the old Common Law pleading to this indictment, we claim that even the language of the statute, and much less the language of this indictment, fails to furnish the defendant with the sufficient facts and circumstances of the crime with which he is charged.

The indictment charges, that on the ..... day of April, 1896, and in Appanoose County, in the Southern District of Iowa, the defendant carried on the business of a retail liquor dealer, without paying the special tax, as required by law.

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Under such a charge, the defendant has to defend his conduct during a period of three years, and over a territory equal to one-sixth the size of the State of Iowa.

It is a matter of judicial knowledge, that in the State of Iowa, laws have been enacted prohibiting the sale of intoxicating liquors. In many of the counties of the state, there are no saloons open for the sale of intoxicating liquors. Many of the violations of the Federal Statute arise where the liquors are carried around on the person, and the term "boot-legger" has been invented to describe this itinerant vendor of intoxicating liquors. Such violators are generally the worst scum of society, and their patrons little better, with whom the oath has no sanctity, and the character of their testimony generally as to sales made in solitary places, relieves them of any fear of prosecution for perjury.

A charge of violating the Internal Revenue Law, is an easy one to make against even a reputable citizen and furnishes an easy means to seek revenge. The defendant is tried in a court, sometimes over one hundred miles from his home, by a jury unacquainted with his standing among his neighbors, or the character of the witnesses. Without any knowledge of the witnesses or the nature of their testimony, unless the indictment furnishes him with reasonable information of the facts upon which the government relies, to prove him guilty, his reputation and liberty are placed at the mercy of any set of witnesses, who are willing to commit perjury. Learning for the first time at the trial, the names of the witnesses and the nature of the testimony, it is too late, and too far away from home, either to procure witnesses to impeach or contradict their testimony.

The particularity with which the courts require the indictment to state the facts, depends somewhat upon the nature of the offence and the seriousness of the charge. In U. S. vs. Mills, 7 Pet., 142, the court says: "There is not that technical nicety required as to form, (in indictments for misdemeanors) which seems to have been adopted and sanctioned by long practice in cases of felony * * * * but in all cases the offence must be set forth with clearness and all necessary certainty to apprise the accused of the crime with which he stands charged." The crime charged in this indictment, is a felony, punishable by two years in the penitentiary and $5,000 fine.

We claim that it is at least necessary for the indictment to allege that the business was carried on *between certain dates*, and that the *locality* be designated, as accurately as possible, and certainly within the limits of the town or township.

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The Internal Revenue Department, in issuing the stamps for the special tax, in cities gives the street number of the building, and in small towns without street numbers the name of the town, and in the country the name of the township. The indictment ought to be, at least this certain and particular. In this indictment the place is limited only to Appanoose County and the Southern District of Iowa.

We also claim that justice to the defendant, requires that the indictment should in some manner show, the means by which the government will claim the defendant was violating the law. If it is claimed that the defendant was conducting a business with the usual appurtenances, with which liquors are usually sold, it should so be stated. If it is claimed that the sales were made from the person, it should so state, and give the names, so far as they are known to the Grand Jury, of the parties to whom the sales were made. The facts upon which the government relies for a conviction, are within its knowledge, and can be easily and suscintly stated in the indictment. Where the only evidence of carrying on the business, is the fact that sales were made to one or more persons, without having any place of business or any of the usual equipment for carrying on a business of this character, unless the names of the parties to whom the liquor is sold or offered for sale and reasonable particularity of time and place are given, it is absolutely impossible for the defendant to be prepared to meet the charge, and his conviction or acquittal, is no protection against a subsequent indictment for the same offence.

In Bishop's Crim. Proc. Sec. 578, the author referring to liquor cases says: "The indictment must charge an exact quantity." The Am. and Eng. Encyclopedia of Law at pages 762, 765 and 766, says that the same general rules as to certainty and particularity apply to cases of indictments for the illegal sale of intoxicating liquors, and the better opinion is, that kind or quality of the liquors sold, should be stated, and also that time and place are necessary to be given. In Heods case, 11 Grat. 819, it is said, that the defendant should be apprised of the place alleged, so that he may be prepared with proof, and in Boyle's case, 14 Grat. 694, it is further added, that the indictment should state the *mode of sale*, as inference can never supply a total want of averment in regard to an *essential part* of an offence, *but all the circumstances* must be stated. In two New Hampshire cases we have these significant statements. In every indictment, the offence should be so described as to make it *certain* what the government really relies upon, before trial, to support the

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accusation, what they have relied upon after trial, or for what a conviction has been had, if one be obtained.

State vs. Gray, 36 N. H., 359.

When the words used in an indictment to describe an offence are commonly used in a sense which does not necessarily import an offence, and they are used without any qualification, the indictment will be bad, though the same words in a more strict and technical sense may describe a criminal act.

State vs. Parker, 43 N. H., 83.

State vs. Schmidt, 31 Atlantic Reporter, 280. Where an indictment charged a sale by retail of intoxicating liquors contrary to the law. Held that the indictment is insufficient. "In no wise is defendant informed wherein the *unlawfulness* of his misconduct is supposed to lie. He is left to surmise. * * * * * * A conviction under such indictment would not insure the subsequent protection of the defendant, should his conduct be again questioned for the same act Association vs. Platt, 55 N. J., Law 557. This method of pleading *ignores the constitutional right to be informed of the 'nature and cause of the accusation.*" * * * * * Unless the statute describes the offence, the mere recital of nondescript words from the statute will not constitute in reasonable *completeness* a statement of the offence, so as to relieve the pleader from averring the *acts that go to make it up.*"

In the case of U. S. vs. Hess, 124, U. S., 483, Mr. Justice Field says: "Undoubtedly the language of the statute may be used in the general description of an offence, but it must be accompanied with such a statement of the facts and circumstances, as will inform the accused of the specific offence, coming under the general description with which he is charged," and in another place in the same opinion." "No essential of the crime can be omitted without destroying the whole pleading. The omission can not be supplied by intendment or implication, and the charge must be made directly and not inferentially or by way of recital." All the essentials as to sale, kind of liquors, quantity, mode of carrying on the business, time and place, are lacking in this indictment, and it would seem well nigh needless to multiply authorities.

State vs. Nicholson, 67 Md., 1.
State vs. Miller, 24 Conn., 522.
Cohen vs. People, 7 Colo., 274.
Sleom vs. State, 18 Fla., 903.
Woolsey vs. State, 14th Tex., App., 57.

BLEED.

Pierce vs. State, 63 Md., 592.
State vs. Gabriel, 88 Mo., 631.
Enbanks vs. State, 17 Ala., 181.
State vs. Casey, 45 Me., 435.

We are aware of the rule of pleading, that where an offence is made up of a series of transactions, which cannot be enumerated without prolixity and danger of variance, they ought not to be required to be set out in the indictment, if the charge is otherwise fairly informative of the case to be met.

But we claim that in a case like this, the indictment cannot be fairly informative of the charge, unless it shows that the business was carried on at a certain *place, and between certain dates,* and the material circumstances as to the sale or offer for sale.

Moreover, the cases in which the foregoing rule has been applied, have been in nearly every case, which has come under our notice, indictments for misdemeanors. They have generally been cases for violations of local ordinances, and where the law made every offence of the series of transactions a misdemeanor, and where the defendant was tried in his home forum. They have been cases usually for selling intoxicating liquor without a license, and in each the indictment or information set forth the time, as between certain dates, and the place where the sales were made, and the manner of violation of the ordinance, was alleged to be *the sale of the intoxicating liquors.*

The term retail liquor dealer, as used by the pleader, is a conclusion of law, and is not a statement of fact, like the allegation of the sale of intoxicating liquors. There are certain words like "intoxicating liquors," "distiller," "common scold," "keeping a bawdy house," etc., which have a necessary meaning, and when the words of the statute defining the offences, are used in the indictment, they are generally fairly informative of the charge. Moreover, if the indictment qualifies the language, by such words as "within the meaning and intent of the law." or "as provided by law," and the statute sufficiently defines the words, it may be sufficient. For this reason we have not criticised the allegation "without paying the special tax as *provided* by law." It would be better pleading to allege the amount of the tax, to-wit; $25.00, but probably the allegation is sufficient.

Again tested by the following rule the indictment is bad.

"If the words of the statute embrace cases which it was not the intention of the legislature to include within the law, the indictment should show this is not one of the cases thus excluded."

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United States vs. 2 Curtis (C. C.,) 268.
In re. Mary Ann, 8 Wheat, 387.

The term "retail liquor dealer" in its general sense, embraces a large class of individuals, which by the sections following in the statute, and many decisions of the courts, are not intended to be included in this term, such as vinters, druggists, a single sale for accommodation, selling in greater quantities than five gallons, etc. In this respect, the indictment is insufficient, for it has been shown that the term, "retail liquor dealer" is of such a general nature, that it is in itself insufficient to meet the requirements of the law, as to certainty and definiteness of the language of an indictment.

In State vs. Melville 11 R. I., 417, the general principle is, stated clearly and concisely. "A criterion of the sufficiency of the indictment for a statutory offence, is that the averments should make it certain, that the act charged is the act forbidden by the statute, and so exclude any assumption that the indictment may have been proved and the defendant may still be innocent."

Where the offence consists in carrying on a business, the identity of the crime can only be shown by allegations of circumstances of time and place and mode of conducting it. If a defendant can be convicted upon a criminal accusation in which he is not informed, even in the language of the statute with how many crimes he is charged, or with any one circumstance attending any one of them, but only because he is a retail liquor dealer, where each specific sale may prove the crime, and the government may prove as many sales as it can, over a period of three years, and over a whole county, then indeed, as stated by Mr. Bishop in his work on Criminal Procedure, is this constitutional provision "a cable of sand," and gives the accused no protection.

THIRD.

The next objection urged to the indictment is, that the time when the crime is alleged to have been committed, is not at a day necessarily prior to the finding of the indictment.

The term of the District Court at which this indictment was found commenced on the 14th day of April, 1896. The indictment was presented by the Grand Jury and filed in court, on the 28th day of April, 1896. The indictment alleges that on the " . . . . day of April, 1896," the defendant did carry on the business of a retail liquor dealer, etc.

"Every indictment must allege a day and year on which the offence was committed. This is the Common Law rule prevailing

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in most of our states." Bishop Crim. Proc. Sec. 387. However, unless the time is a material element of the crime, it need not be proved as charged.

Every indictment must charge the offence to have been committed on a day or days certain, and these days must be prior to the finding of the indictment, and within the statute of limitations, otherwise no crime is alleged for which the defendant can be punished.

State vs. Pratt, 14th N. H., 456.
State vs. Miller, 79 Ky., 451.
People vs. McCardy, 68 Colo., 576.
State vs. Little, 6 Blachf. 267.
State vs. Rollet, 6 Ia., 535.
Williams vs. State, 12th Tex., App., 226.
State vs. Ingalls, 59 N. H., 88.

In the case of State vs. Beckwith, 18 Am. Dec. 46, the court says: "In the language of a man confessedly great, it is laid down as an undoubted principle in all the books that treat of this matter, that no indictment whatever, can be good, without precisely showing a certain year and day of the material facts alleged in it. 3 Bac. Abr., 561. It is also held by most or all of the ancient crown lawyers, that the time of the commission of offences is, in the general, necessary to be stated in the indictment, and especially where the time for the prosecution is limited by statute."

No day certain is alleged in this indictment, and what is more serious, is, that under the allegation of the ——— day of April, it might have been shown on the trial that the offences were committed either on the 29th or 30th of April, two days after the indictmen was found and returned into court.

In the case of U. S. vs. Conrad, 59 Fed., 458, Circuit Judge Goff held that a charge of an offence as committed on the ——— day of a month and year named is not defective, where *every day of that month was prior* to the finding of the indictment, and within the period of limitations applicable.

The conclusion necessarily follows, that if all the days of the month are not prior to the finding of the indictment, the indictment is bad. Undoubtedly the modern decisions have modified the old common law rules of pleading, but we cannot believe, that they have so entirely abrogated them, that it is not at least necessary to allege the time, at a date which will certainly be prior to the finding of the indictment.

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In these liquor cases, it is especially important, that the date be given. The payment of the tax makes the sales legal from that time on during the fiscal year. Defendant may come to the trial prepared to prove that at the time, he supposed the government will attempt to show that he was violating the law, he had paid the tax, or was working for another who had paid the tax, and be surprised by the testimony of the witnesses, who either by honest mistake, or wilful perjury may fix the date at a different time, and the defendant will not be prepared to meet the charge.

Tested ~~before~~ by the most elementary, the simplest, and therefore the best established rules of pleading, this indictment is insufficient to charge a crime, because;

1. It fails to allege the offence substantially in the language of the statute.

2. It fails to set out any of the essentials of which the crime is composed.

3. It fails to fairly inform the defendant of the nature of the charge upon which he is to be tried.

4. It fails to allege that the crime was committed on a date prior to the finding of the indictment.

We respectfully submit that the motion in arrest of judgment should have been sustained.

H. SCOTT HOWELL,
WILLIAM C. HOWELL,
Attorneys for Plaintiff in Error.

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In the Supreme Court of the United States

October Term, 1897

William L. Dunsmoor, plaintiff in error,
v.
The United States.

No. 196.

In error to the district court of the United States for the southern district of Iowa.

BRIEF FOR THE UNITED STATES.

Jas. E. Boyd,
Assistant Attorney-General.

In the Supreme Court of the United States.

OCTOBER TERM, 1897.

WILLIAM L. LEDBETTER, PLAINTIFF in error,
v.
THE UNITED STATES. } No. 196.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF IOWA.

BRIEF FOR THE UNITED STATES.

STATEMENT.

The plaintiff in error was indicted for carrying on the business of a retail liquor dealer without having paid the special tax therefor, as required by law. He was found guilty as charged in the indictment in count 1, and sentenced to imprisonment in jail for thirty days and to pay a fine of $250 and costs. (Rec., pp. 2–6.)

POINTS AND ARGUMENT.

I.

The exception in this case by the plaintiff in error is based first upon alleged defectiveness of the first count of the bill of indictment on which plaintiff in error was convicted. This count is drawn under section 3242 of the Revised Statutes, section 16 of the act of February 8, 1875 (18 Stat., 307), which describes the offense for which the plaintiff in error was indicted, as follows:

> That any person who shall carry on the business of * * * retail liquor dealer * * * without having paid the special tax as required by law * * * shall for every such offense be fined not less than one hundred dollars nor more than five thousand dollars, and imprisoned not less than thirty days nor more than two years.

It will be observed that the indictment in this case follows the wording of the statute, except the word "therefor" is added, the indictment being (after the usual recitals) as follows:

> Did then and there wilfully, unlawfully, and feloniously carry on the business of a retail liquor dealer, without having paid the special tax *therefor* as required by law, contrary to the statute in such cases made and provided, and against the peace and dignity of the United States of America.

Subdivison 4, section 3244, of the Revised Statutes, as amended, and section 18 of the act of February 8, 1875, as amended by section 4 of the act of March 1, 1879 (20 Stat., 327), providing for the payment of special taxes, fixes the amount to be paid by retail dealers in liquor at $25 per annum, and also provides that "every person

who sells or offers for sale foreign or domestic distilled spirits, wines, or malt liquors, otherwise than hereinafter provided, in less quantities than five wine gallons at the same time, shall be regarded as a retail dealer in liquors."

So it was not necessary, in the bill of indictment charging this offense, to allege more than is set forth in the count upon which the plaintiff in error was convicted. It charges the offense with certainty, for that it states that he carried on the business of a retail liquor dealer without having paid the special tax required by law.

As to requirements in indictments, see Wharton's Crim. Pl. and Pr., 166; Clark's Crim. Proc., 150; Bishop, § 519 *et seq.*; Wharton's Crim. Pl. and Pr., 9th ed., § 151; 1 Bishop's New Crim. Proc., § 511.

The further exception is to the refusal of the court, at the request of plaintiff in error, to require the attorney for the United States to furnish bill of particulars.

An application for a bill of particulars is addressed to the discretion of the court, and its decision thereon is not open to revision by a higher tribunal.

1 Bishop's New Crim. Proc., § 643;
Wharton's Crim. Pl. & Pr., § 705;
Com. v. *Giles*, 1 Gray (Mass.), 466, 469;
Com. v. *Wood*, 4 Gray, 11, 13;
Harrington v. *Harrington*, 107 Mass., 329, 334;
Townsend v. *Williams*, 117 N. C., 330, 337;
State v. *Hill*, 13 R. I., 314, 315;
State v. *Nagle*, 14 R. I., 331, 333.

JAS. E. BOYD,
Assistant Attorney-General.

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In the Supreme Court of the United States.

OCTOBER TERM, 1897.

WM. LEDBETTER, PLAINTIFF IN ERROR, v. THE UNITED STATES. No. 196.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF IOWA.

SUPPLEMENTAL BRIEF FOR THE UNITED STATES.

The brief heretofore filed in behalf of the United States was prepared before the brief for plaintiff in error was filed, and by leave of the court this supplemental brief is filed in order to respond more fully to the line of argument pursued by the plaintiff in error.

The count of the indictment on which the plaintiff in error was convicted is as follows (Rec., pp. 2, 3):

> The grand jurors of the United States of America, duly impaneled, sworn, and charged to inquire in and for the body of said southern district of Iowa,

> at a term of the United States district court begun and held at Keokuk, in said district, on the 14th day of April, A. D. 1896, in the name and by the authority of the United States of America, upon their oaths do find and present that Lewis Ledbetter, late of said district, heretofore, to wit, on the ——— day of April, A. D. 1896, in the county of Appanoose, in the southern district of Iowa, and within the jurisdiction of this court, did then and there willfully, unlawfully, and feloniously carry on the business of a retail liquor dealer without having paid the special tax therefor, as required by law, contrary to the statute in such case made and provided and against the peace and dignity of the United States of America.

It is insisted by the plaintiff in error that the charge against plaintiff in error is not set forth sufficiently, and is not as specific as is required by the rules of law applicable to indictments, in other words, that the allegations of the bill of indictment are not sufficient in law to constitute an offense under the statute. In the court below, no objection was taken to the bill of indictment anterior to the trial. Ledbetter entered his plea of "Not guilty," and, after conviction, his attorneys made motion to the court for arrest of judgment, and set forth reasons for the motion as follows (Rec., p. 5):

> That the indictment under which defendant was tried was defective, in that it stated merely conclusions of law; that the charges therein were stated in such general terms that it was impossible for the defendant to learn the particulars which constituted the crime charged; that the defendant, following a customary practice in similar cases, made a request for the particulars of such charges of the United

> States district attorney, and was refused; that by reason of such insufficient indictment and the refusal of the prosecution to furnish bill of particulars the defendant was unable to make preparation to meet the evidence of the prosecution; whereas if said indictment had been sufficient and said bill of particulars had been furnished he would have been able to meet and controvert the material evidence submitted by the prosecution.

And to this motion the counsel afterwards added another reason (Rec., pp. 5 and 6) in the way of an amendment, as follows:

> because the facts therein stated do not constitute an offense against the laws and statutes of the United States.

The question of the right of the plaintiff in error to have the United States furnish a bill of particulars, though made one of the points of exception and assignment of error in the record, is not referred to by plaintiff in error in his brief; but in the brief heretofore filed in behalf of the United States, authorities are cited to sustain the position that an application for a bill of particulars is addressed to the discretion of the court, and its decision thereon is not open to revision by a higher tribunal.

The first position claimed by the plaintiff in error in his objection to the sufficiency of the bill of indictment is that there is nothing in the generic meaning of the words "liquors" and "retail" which reasonably indicates the kinds of liquors and the quantities forbidden by the United States without the payment of the special tax of $25; and that it is impossible to charge any

crime by the use of the words "carrying on the business of a retail liquor dealer." The provisions of law established by the statutes relating to the offense with which Ledbetter is charged furnish a complete answer to this position. As stated in the brief heretofore filed, the indictment is under section 16 of the act of February 8, 1875 (18 Stat., 307), Comp. Int. Rev. Laws, 1894, section 3242a, p. 83.

> (SEC. 3242a.) *Sec. 16, act of February 8, 1875 (18 Stat., 307).* That any person who shall carry on the business of a rectifier, wholesale liquor dealer, retail liquor dealer, wholesale dealer in malt liquors, retail dealer in malt liquors, or manufacturer of stills, without having paid the special tax as required by law, or who shall carry on the business of a distiller without having given bond as required by law, or who shall engage in or carry on the business of a distiller with intent to defraud the United States of the tax on the spirits distilled by him, or any part thereof, shall, for every such offense, be fined not less than one hundred dollars nor more than five thousand dollars and imprisoned not less than thirty days nor more than two years.
>
> * * * *

Eliminating the parts of the section except such as refer to the offense in this case, we have the statute as follows:

> That any person who shall carry on the business of a retail liquor dealer without having paid the special tax required by law, for every such offense shall be fined not less than one hundred dollars nor more than five thousand dollars and imprisoned not less than thirty days nor more than two years.

If the lawmakers had stopped with this statute, there might be something in the position that the allegation in this bill of indictment charging the offense to be *carrying on the business of a retail liquor dealer without paying the special tax* is indefinite; but Congress went further, and by section 18 of the act of February 8, 1875, as amended by section 4 of the act of March 1, 1879 (20 Stat., 327), Comp. Int. Rev. Laws, 1894, p. 86, provides for the tax on retail liquor dealers, and also describes in explicit terms what is necessary to constitute such a dealer. This statute is as follows:

> *Sec. 18, act of February 8, 1875, as amended by section 4, act of March 1, 1879 (20 Stat., 327).* That retail dealers in liquors shall pay twenty-five dollars.
>
> Every person who sells, or offers for sale, foreign or domestic distilled spirits, wines, or malt liquors, otherwise than as hereinafter provided, in less quantities than five wine gallons at the same time, shall be regarded as a retail dealer in liquors.

Therefore a person who actually sells or offers for sale foreign or domestic distilled spirits, wines, or malt liquors in quantities less than five gallons is a retail dealer in liquors. The act last above referred to also provides the following in regard to retail dealers in malt liquors exclusively:

> Retail dealers in malt liquors shall pay twenty dollars.
>
> Every person who sells, or offers for sale, malt liquors in less quantities than five gallons at one time, but who does not deal in spirituous liquors, shall be regarded as a retail dealer in malt liquors.

So that the allegation in a bill of indictment that one is carrying on the business of retail liquor dealer without paying the special tax is sufficient to cover any sale, or offer to sell, in quantities of less than 5 gallons, of any foreign or domestic distilled spirits; and if it were intended to charge the offense to consist in the selling of malt liquors exclusively, in quantities less than 5 gallons, then it would be sufficient to allege that he carried on the business of retail dealer in malt liquors without paying the special tax.

In the case of the *United States* v. *Remmeke*, 28 F. R., 847, the indictment charged the offense in the language of the statute, as is done in this case, namely, *carrying on the business of retail liquor dealer without having paid the special tax*. In delivering the opinion in this case, his honor, Judge Simonton, holds that the accused should be convicted under the charge in the indictment if he ever sold or had liquor on hand to be sold to anyone who applied for it, though but one sale is proved; and in the same case it is held that the fact of not having a bar-room, or the usual appliances of a retail liquor dealer, does not affect the case; that if a person has procured spirituous liquor with intent to sell it again, in small quantities, to anyone who may apply for it, or, having it on hand, determines to sell it out to anyone who applies for it, he must pay the special tax. The attempt to carry out his intent is a violation of law.

If, therefore, a person has on hand distilled spirits with intent to sell to such as apply, if he does sell, or offers to sell, in quantities less than 5 gallons, he is in

law a retail liquor dealer. I also cite *United States* v. *Barnhart*, 20 Int. Rev. Rec., p. 137.

Objection is made that the time and place of the alleged offense are not sufficiently alleged It is scarcely possible to see how the place could be more definitely set forth. I do not believe that any elementary work or decision of the courts can be found in which it is declared that more is required in a bill of indictment as to place than to charge that the offense was committed in a particular county. Of course, under special statutes, such as prohibition acts and others applicable to particular localities or communities, such as incorporated towns or townships, it would be necessary to allege the offense within the limits of such localities; but in any general offense, either at common law or by statute, I insist that it is sufficiently definite as to place to charge the offense as within a certain county. The charge in the case under consideration is that the offense was committed in the county of Appanoose in the southern district of Iowa.

The principal object in giving the name of the place in an indictment is to show that the offense was committed within the jurisdiction of the court, and the allegation that an offense was committed "*in the county of Appanoose, in the southern district of Iowa, and within the jurisdiction of this court*," the indictment being found by the grand jury for the district court of the United States in and for the southern district of Iowa, sufficiently lays the venue.

It is only necessary to charge the minor locality where the crime can be perpetrated in some place less than the

whole county. This is the law as applicable to indictments in the State courts, but the law applying to the jurisdiction of the United States courts is well settled that the jury does not come from the body of the county, and the jurisdiction is coextensive with the district. Therefore the indictment need not mention the county. (Bishop's New Crim. Proc., vol. 1, p. 230, par. 375 (2).)

The date in the indictment is "the —— day of April, A. D. 1896." The record shows (p. 3) that the indictment was returned by the grand jury and filed in court on the 28th day of April, 1896. The plaintiff in error contends that the date so alleged is not a day necessarily prior to the date of the indictment. The alleged offense must certainly have been before the finding of the indictment. Otherwise, nothing had taken place to authorize the grand jury to act. The witnesses examined by the grand jury must have sworn to some acts of Ledbetter committed before they testified or the grand jury could not have found a true bill.

It is the usual practice in offenses of this character to charge the offense in the body of the bill of indictment as on the date of the first day of the term. This is the practice in both the Federal and State courts, and is applied to all criminal offenses except capital felonies and, possibly, a few other felonies of a very high grade. There are also certain classes of offenses which can be committed on particular days, as violations of criminal laws pertaining to the Sabbath, or hunting and fishing in certain seasons of the year. Of course, in such cases the time is of essence of the offense and must be specifically alleged and proved.

The indictment in this case charges the offense on the —— day of April, 1896. The record (p. 2) shows that the court in which the bill was found by the grand jury was held beginning on the second Tuesday of April (being the 14th day of said month), 1896.

Carrying on the business of a retail dealer in liquor without having paid the special tax is in the nature of a continuing offense, and the time, so it is within the statute of limitations, is not material. There is no special reason rendering it important that the indictment in this case should allege the precise date of the crime. The allegation as to time is therefore mere form, and the time proved need not be the same as laid. (Bishop's New Crim. Proc., Vol. I, par. 386, p. 237. See also cases cited by Bishop in notes 1 and 2, referred to in the above paragraph.)

The omission to allege a particular day in April does not affect the validity of the charge. It simply amounts to charging the formal date in the bill of indictment as in the month of April, anterior, of course, to the finding and presentation of the indictment.

JAS. E. BOYD,
Assistant Attorney-General.

LEDBETTER *v.* UNITED STATES.

ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF IOWA.

No. 196. Submitted April 12, 1898. — Decided May 23, 1898.

An indictment for a violation of the provisions of section 16 of the act of February 8, 1875, c. 36, forbidding the carrying on of the business of a rectifyer, wholesale liquor dealer, etc., without first having paid the special tax required by law, which charges the offence in the language of the statute creating it, is sufficient; and it comes within the rule, well settled in this court, that where the crime is a statutory one, it must be charged with precision and certainty, and every ingredient of which it is composed must be clearly and accurately set forth, and that even in the

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Statement of the Case.

cases of misdemeanors, the indictment must be free from all ambiguity, and leave no doubt in the minds of the accused and of the court, of the exact offence intended to be charged.

Properly speaking, the indictment should state not only the county, but the township, city or other municipality within which the crime is alleged to have been committed; but the authorities in this particular are much less rigid than formerly.

THIS was a writ of error to review the conviction of the plaintiff in error upon an indictment found against him by the grand jury for the Southern District of Iowa, April 28, 1896, for a violation of section 16 of the act of February 8, 1875, c. 36, 18 Stat. 307, in carrying on the business of a retail dealer in liquors without the payment of the special tax required by law.

Defendant was convicted upon the first count in the indictment, which reads as follows:

"The grand jurors of the United States of America duly empanelled, sworn and charged to inquire in and for the body of said Southern District of Iowa, at a term of the United States District Court begun and held at Keokuk, in said district, on the 14th day of April, A.D. 1896, in the name and by the authority of the United States of America, upon their oaths do find and present that Lewis Ledbetter, late of said district, heretofore, to wit, on the — day of April, A.D. 1896, in the county of Appanoose, in the Southern District of Iowa, and within the jurisdiction of this court, did then and there wilfully, unlawfully and feloniously carry on the business of a retail liquor dealer without having paid the special tax therefor, as required by law, contrary to the statute in such case made and provided, and against the peace and dignity of the United States of America."

After his conviction defendant moved for an arrest of judgment upon the insufficiency of the indictment. This motion was overruled, and the defendant sentenced to pay a fine of $250 and costs of prosecution.

Defendant thereupon sued out a writ of error from this court, assigning as error that the indictment did not state facts constituting an offence against the laws of the United

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States, (1) because it did not set forth that the defendant sold or offered for sale foreign or domestic spirituous or malt liquors otherwise than as provided by law; (2) that he was not informed with sufficient particularity as to the time and place and means so as to apprise him of the crime of which he was charged; and (3) that the indictment did not allege that any crime had been committed at a date prior to the finding of the indictment.

Mr. H. Scott Howell and *Mr. William C. Howell* for plaintiff in error.

Mr. Assistant Attorney General Boyd for defendants in error.

Mr. Justice Brown, after stating the case, delivered the opinion of the court.

Defendant did not demur to the indictment, nor move to quash, nor take advantage of its alleged insufficiency upon the trial, but after conviction moved in arrest of judgment upon the ground that it failed to aver with sufficient particularity the details of the offence, and the time and place of its commission.

1. The principal alleged defect in the indictment is set forth in the third, fourth and fifth assignments of error, which charge that the indictment did not state facts which would constitute an offence against the laws; in that it did not allege that the defendant sold or offered for sale foreign or domestic distilled spirits, wines or malt liquors otherwise than as provided by law, or any of said liquors, or to whom said liquors were sold or offered for sale, and because it did not allege that defendants had sold or offered for sale any of said liquors in quantities less than five wine gallons at the same time, and because the indictment did not allege that the defendant had not paid $25, the amount of the tax provided by the statute, and generally, because the allegations of the indictment are only a legal conclusion, unsupported by

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the primary and individualizing facts which constituted an offence, etc.

By section 16 of the act of February 8, 1875, c. 36, 18 Stat. 307, 310, under which defendant was convicted, it is provided that "any person who shall carry on the business of a . . . retail liquor dealer . . . without having paid the special tax as required by law . . . shall, for every such offence, be fined, etc.," and the first count of the indictment charged in the very words of this section that the defendant "did then and there wilfully, unlawfully and feloniously carry on the business of a retail liquor dealer without having paid the special tax therefor, as required by law, contrary to the statute in such case made and provided and against the peace and dignity of the United States of America."

Defendant insists that it was not sufficient to charge him with the offence in the language of the statute, but that the indictment should have set forth the particular facts which showed that he was a retail liquor dealer, and should also have averred that he had not paid the tax of $25 provided by law.

By section 18 of the same act retail dealers in liquor are required to pay a special tax of $25, and "every person who sells or offers for sale foreign or domestic distilled spirits, wines or malt liquors, otherwise than as hereinafter provided, in less quantities than five wine gallons at the same time, shall be regarded as a retail dealer in liquors."

The question presented for our consideration is whether it is sufficient to charge the offence in the language of the statute creating such offence and fixing the punishment therefor, or whether it is necessary to charge it in the language of the statute defining the business of a retail liquor dealer, averring that the defendant had done the acts therein stated without payment of the special tax, and had therefore rendered himself amenable to the punishment provided by the former section.

We do not undertake to say that the latter would not be a proper course, but we think an allegation in the language of the statute creating the offence is sufficient. We have no dis-

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position to qualify what has already been frequently decided by this court, that where the crime is a statutory one it must be charged with precision and certainty, and every ingredient of which it is composed must be clearly and accurately set forth, and that even in the cases of misdemeanors the indictment must be free from all ambiguity, and leave no doubt in the minds of the accused and the court of the exact offence intended to be charged. *United States* v. *Cook*, 17 Wall. 168, 174; *United States* v. *Cruikshank*, 92 U. S. 542, 558; *United States* v. *Carll*, 105 U. S. 611; *United States* v. *Simmons*, 96 U. S. 360; *United States* v. *Hess*, 124 U. S. 483; *Pettibone* v. *United States*, 148 U. S. 197; *Evans* v. *United States*, 153 U. S. 584.

But we are of opinion that the statute in this case (section 16) does define the offence with the requisite precision, and that the pleader has chosen the safer course in charging it in the language of this section. The offence does not consist in selling or offering for sale to a particular person distilled spirits, etc., in less quantities than five gallons at one time, but in carrying this on as a business; in other words, in the defendant holding himself out to the public as selling or offering for sale, etc. While it has been sometimes held that proof of selling to one person was, at least, *prima facie* evidence of criminality, the real offence consists in carrying on such business, and if only a single sale were proven it might be a good defence to show that such sale was exceptional, accidental or made under such circumstances as to indicate that it was not the business of the vendor. *United States* v. *Jackson*, 1 Hughes, 531; *United States* v. *Rennecke*, 28 Fed. Rep. 847. It is quite evident that an indictment averring in the language of section 18 that the defendant sold or offered for sale the liquors named, without averring that he made this a business, and that he had not paid the special tax required by law, would be insufficient.

In addition to this, however, section 18, in defining retail dealers in liquors, declares that "every person who sells or offers for sale foreign or domestic distilled spirits, wines or malt liquors, *otherwise than as hereinafter provided*, in less

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quantities than five wine gallons at the same time, shall be regarded as a retail dealer in liquors." The statute, by the use of the words "otherwise than as hereinafter provided," thus introduces an exception into the general words of the definition, and it might be open to doubt whether an indictment which charged only the selling or offering for sale in the language of this section should not also negative the fact that the sale was not within such exception. The general rule is that while the pleader is not bound to negative a a proviso, he is bound to aver that the defendant is not within any of the exceptions contained in the enacting clause of the statute. *United States* v. *Cook*, 17 Wall. 168; *Maxwell Land Grant Co.* v. *Dawson*, 151 U. S. 586, 604; *State* v. *Haden*, 15 Missouri, 447; *State* v. *Walsh*, 14 R. I. 507; *State* v. *Sommers*, 3 Vermont, 156, 157; *State* v. *Munger*, 15 Vermont, 290; *Thompson* v. *State*, 37 Arkansas, 408; *State* v. *O'Brien*, 74 Missouri, 549. The words "otherwise than as hereinafter provided" in this section probably refer to wholesale liquor dealers in distilled spirits, wholesale and retail dealers in malt liquors, brewers and others who are either exempt from taxation or pay a different tax, and if it were necessary to aver that the defendant was not within either of these exceptions, the indictment might be drawn out to an intolerable length. Upon the other hand, when it is averred in the language of section 16 that the defendant carried on the business of a retail liquor dealer without payment of a special tax, the description, though brief, is comprehensive, although section 18 may be referred to as defining the offence with more particularity. But we do not think it necessary to charge the offence in the language of the definition. If Congress had not defined a retail liquor dealer it would be proper to resort to a dictionary for a definition of this term; but it is no more necessary in one case than in another to charge the offence in the language of the definition.

The cases wherein it is held that an indictment in the exact language of the statute is not sufficient are those wherein the statute does not contain all the elements of the offence, as in

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United States v. *Carll*, 105 U. S. 611, where a statute against passing counterfeit money failed to aver the scienter; but where the statute sets forth every ingredient of the offence, an indictment in its very words is sufficient, though that offence be more fully defined in some other section. *United States* v. *Gooding*, 12 Wheat. 460, 473; *United States* v. *Wilson*, Baldwin, 78, 119; *Hess* v. *State*, 5 Ohio, 5; *Harrington* v. *State*, 54 Mississippi, 490, 494.

Notwithstanding the cases above cited from our reports, the general rule still holds good that upon an indictment for a statutory offence the offence may be described in the words of the statute, and it is for the defendant to show that greater particularity is required by reason of the omission from the statute of some element of the offence. Where the statute completely covers the offence, the indictment need not be made more complete by specifying particulars elsewhere obtained. *Whiting* v. *State*, 14 Connecticut, 487; *Simmons* v. *State*, 12 Missouri, 268; *State* v. *Smant*, 4 Rich. (S. C., 356; *Parkinson* v. *State*, 14 Maryland, 184.

2. The only allegation of time and place in this indictment is that the offence was committed "on the — day of April, A.D. 1896, in the county of Appanoose, in the Southern District of Iowa."

Good pleading undoubtedly requires an allegation that the offence was committed on a particular day, month and year, but it does not necessarily follow that the omission to state a particular day is fatal upon a motion in arrest of judgment. Neither is it necessary to prove that the offence was committed upon the day alleged, unless a particular day be made material by the statute creating the offence. Ordinarily, proof of any day before the finding of the indictment, and within the statute of limitations, will be sufficient. *Armstrong* v. *State*, 145 Indiana, 609; *Gratz* v. *Commonwealth*, 96 Kentucky, 162; *United States* v. *Conrad*, 59 Fed. Rep. 458; *Fleming* v. *State*, 136 Indiana, 149; *State* v. *McCarthy*, 44 La. Ann. 323.

In the case under consideration the indictment was found on the 28th day of April, 1896, and the allegation is that the crime was committed "on the — day of April, 1896," which

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must necessarily have been a day preceding the finding of the indictment. Under such circumstances, the defendant could not possibly have been misled by the allegation, particularly in view of the fact that the carrying on of a business is in the nature of a continuing offence; and while it is true that a business can be carried on only for a single day, the ordinary inference would be that it was carried on for a longer period. It would seem illogical to hold that, if the offence had been charged to have been committed upon a particular day in April, evidence could have been given of any day within the statute of limitations, and yet to hold that the defendant could be misled by an averment that the offence was committed on the — day of the month in which the indictment was found.

3. Much the same observations may be made with respect to the averment of place, which was simply "in the county of Appanoose, in the Southern District of Iowa, and within the jurisdiction of this court."

Properly speaking, the indictment should state not only the county, but the township, city or other municipality within which the crime is alleged to have been committed. But the authorities in this particular are much less rigid than formerly. Under the early English law, where the jurymen were also witnesses and were summoned from the vicinage, it was necessary that the locality of the crime should be stated with great particularity in order that the sheriff might be informed from what vicinage he should summon the jury. But this requirement was long since abolished in England by statute, and it is not now necessary there "to state any venue in the body of any indictment, but the county, city or other jurisdiction named in the margin thereof shall be taken to be the venue for all the facts stated in the body of such indictment." 1 Bish. Crim. Procedure, sec. 368.

While in this country it is usual to state the town as well as the county, it has not been generally deemed necessary to do so, and most of the authorities assume that an allegation is sufficient after verdict which shows it to have been done within the jurisdiction of the court. *Heikes* v. *Commonwealth*, 26 Penn. St. 513; *United States* v. *Wilson*, Baldwin, 78;

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Carlisle v. *State*, 32 Indiana, 55; *State* v. *Goode*, 24 Missouri, 361; *State* v. *Smith*, 5 Harr. 490; *Barnes* v. *State*, 5 Yerg. 186; *Covy* v. *State*, 4 Port. 186; *Wingard* v. *State*, 13 Georgia, 396; *State* v. *Warner*, 4 Indiana, 604. Indeed, an indictment charging the offence to have been committed in one town is supported by proof that it was committed in a different town within the same county, and within the jurisdiction of the court. *Commonwealth* v. *Tolliver*, 8 Gray, 386; *Commonwealth* v. *Creed*, 8 Gray, 387; *Carlisle* v. *State*, 32 Indiana, 55; *Commonwealth* v. *Lavery*, 101 Mass. 207; *People* v. *Honeyman*, 3 Denio, 121.

We do not wish to be understood as approving the practice that was pursued in this case, or even as holding that this indictment might not have been open to special demurrer for insufficiency as to the allegations of time and place, but upon motion in arrest of judgment we think it is sufficient.

The judgment of the court below is

Affirmed.